

AMENDED IN SENATE AUGUST 31, 2007

AMENDED IN ASSEMBLY JUNE 1, 2007

AMENDED IN ASSEMBLY APRIL 16, 2007

CALIFORNIA LEGISLATURE—2007—08 REGULAR SESSION

ASSEMBLY BILL

No. 156

Introduced by Assembly Member Laird

January 18, 2007

An act to ~~amend Sections~~ *add Section 13332.11.1 to the Government Code, to add Section 5096.830 to the Public Resources Code, and to amend Sections 12878, 12878.1, 12878.21, and 12878.23 of, to add Sections 8306, 8612, 8613, and 12585.12 to, and to add Chapter 9 (commencing with Section 9110) to Part 4 of, and to add Part 8 (commencing with Section 9650) to, Division 5 of, the Water Code, relating to flood control, and making an appropriation therefor.*

LEGISLATIVE COUNSEL'S DIGEST

AB 156, as amended, Laird. Flood control.

(1) The Department of Water Resources performs various flood control activities throughout the state. Existing law also authorizes the Reclamation Board to engage in various flood control activities along the Sacramento River and San Joaquin River, their tributaries, and related areas. Existing law requires the board to establish and enforce standards for the maintenance and operation of, and to undertake other responsibilities with regard to, flood control works under its jurisdiction.

This bill would authorize the department to provide meals and other necessary support to any person engaged in emergency flood fight activities, as defined, on behalf of, or in cooperation with, the department. The bill would require the department, on or before

December 31, 2008, to prepare, and the board to adopt, a schedule for mapping areas at risk of flooding in the Sacramento River and San Joaquin River drainage. The bill would authorize the board or the department to establish a program of mitigation banking for the activities of the board or the department and for the benefit of local districts in the discharge of specified flood control responsibilities.

The bill would require the department to prepare, and the board to adopt, a flood control system status report, to be updated periodically, for the State Plan of Flood Control, as defined, and to undertake a related inspection of project levees, as defined. The bill would require the department, on or before September 1, 2010, and on or before September 1 of each year thereafter, to provide written notice to each landowner whose property is determined to be within a levee flood protection zone. The bill would require the department to prepare and maintain maps for levee flood protection zones. The bill would authorize the department to revise the maps to include updated information.

The bill would require, on or before September 30 of each year, a local agency responsible for the operation and maintenance of a project levee to prepare and submit to the department a specified report of information for inclusion in periodic flood management reports prepared by the department. By establishing these requirements on a local agency, the bill would impose a state-mandated local program. The bill would require the department, on or before December 31, 2008, to prepare and transmit to the board a report on project levees that are operated and maintained by each local agency using certain information. The bill would specify that a local agency responsible for the operation and maintenance of a project levee may propose to the board an upgrade of the project levee.

(2) Existing law authorizes, on a project-by-project basis, and in accordance with designated plans, state participation in federal flood control projects and specifies the degree of cooperation to be assumed by the state and local agencies in connection with those projects. Existing law, except as otherwise provided, requires the board to give assurances satisfactory to the Secretary of the Army that local cooperation as required by federal law will be furnished by the state in connection with described flood control projects.

This bill would authorize the department and the board to participate with the federal government or local agencies in the design of environmental enhancements associated with a federal flood control project, and to participate in the construction of environmental

enhancements associated with a federal flood control project for which the state has authorized state participation.

(3) Existing law establishes procedures for the assumption of flood control maintenance and operation duties by the department in connection with the formation of a maintenance area on behalf of a federal flood control project unit *if the department finds that a unit of a project is not being operate or maintained in accordance with standards established by federal regulations or the governing body of a local agency obligated to operate and maintain that unit by resolution declares that it no longer desires to operate and maintain the unit.* Under existing law, the department and the board are not required to form a maintenance area if neither agency has given the nonfederal assurances to the United States required for the project, except as otherwise provided for a project for which an application for the formation of the maintenance area has been submitted on or before July 1, 2003. Existing law prescribes requirements relating to the imposition of assessments on behalf of a maintenance area. Existing law requires the funds generated by the imposition of the assessments to be deposited in the Water Resources Revolving Fund and continuously appropriates those funds to pay the operation and maintenance costs of maintenance areas. Existing law provides for the dissolution of a maintenance area.

This bill would provide for the formation of a maintenance area if the department determines that a project unit is not being operated or maintained in accordance with federal regulations or the modification of a project unit that has been permitted by the board and that provides flood protection is not being operated or maintained in accordance with the requirements established by the board or the department, or if the local agency obligated to operate and maintain the project unit declares that it no longer desires to do so. The bill would provide that, if a maintenance area is formed for a portion of a project unit, any remaining portion of the project unit not included in the maintenance area remains the responsibility of the local agency obligated to operate and maintain that unit. The bill would authorize the board and the department to consolidate maintenance areas that share a common boundary.

~~This~~

The bill would delete the provisions relating to the formation of a maintenance area for a project for which an application for the formation of a maintenance area has been submitted on or before July 1, 2003. The bill would provide that the department is not required to perform

certain work in connection with the formation of a maintenance area requested by a local agency until the local agency requesting the formation of the maintenance area pays to the department an amount of money that reflects certain costs incurred by the department.

~~The bill would authorize the board or the department to form a maintenance area for a project unit, or any portion of a project unit. The bill would provide that, if a maintenance area is formed for a portion of a project unit, any remaining portion of the project unit not included in the maintenance area shall remain the responsibility of the local agency obligated to operate and maintain that unit. The bill would authorize the board and the department to consolidate maintenance areas that share a common boundary.~~

The bill would change requirements relating to the imposition of assessments by revising the definition of the term “maintenance” to include work described as maintenance by the board or the department. By expanding the definition of that term to include additional work, the costs of which would be paid on behalf of maintenance areas from the continuous appropriation of funds from the Water Resources Revolving Fund, the bill would make an appropriation.

(4) Under existing law, the department expends or allocates funds on behalf of various flood control projects within the Sacramento-San Joaquin Delta and related areas.

This bill, commencing July 1, 2008, would subject the allocation or expenditure of funds by the state for the upgrade of a project levee, if that upgrade is authorized by a statute that becomes operative on or after July 1, 2008, that protects an urban area in which more than 1,000 people reside to a requirement that the local agency responsible for the operation and maintenance of the project levee and any city or county protected by the project levee enter into an agreement to adopt a safety plan that includes specified components, within 2 years. If a city or county is responsible for the operation or maintenance of the project levee, the bill would require the governing body to approve a resolution committing to the preparation of a safety plan within 2 years. The bill would define the “upgrade of a project levee” to mean specified improvements, excluding any action undertaken on an emergency basis.

(5) *Existing law generally prohibits the expenditure of funds by a state agency for capital outlay until the Department of Finance and the State Public Works Board have approved preliminary plans for the project by to be funded from a capital outlay appropriation.*

This bill would provide that the approval of the State Public Works Board is not required prior to the expenditure of specified flood protection bond funds by the department under certain circumstances. The bill would also make inapplicable certain requirements relating to the adoption of regulations to the development and adoption of program guidelines and selection criteria for the purposes of the Disaster Preparedness and Flood Prevention Bond Act of 2006.

(5)

(6) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that with regard to certain mandates no reimbursement is required by this act for a specified reason.

With regard to any other mandates, this bill would provide that, if the Commission on State Mandates determines that the bill contains costs so mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.

Vote: majority. Appropriation: ~~no~~-yes. Fiscal committee: yes. State-mandated local program: yes.

The people of the State of California do enact as follows:

- 1 SECTION 1. The Legislature hereby finds and declares all of
- 2 the following:
- 3 (a) The central valley of this state is experiencing unprecedented
- 4 development, resulting in the conversion of historically agricultural
- 5 lands and communities to densely populated residential and urban
- 6 centers.
- 7 (b) The Legislature recognizes that by their nature, levees, which
- 8 are earthen embankments typically founded on fluvial deposits,
- 9 cannot offer complete protection from flooding, but can decrease
- 10 its frequency.
- 11 (c) The Legislature recognizes that the level of flood protection
- 12 afforded rural and agricultural lands by the original flood control
- 13 system is not considered adequate to protect those lands when
- 14 developed for urban uses, and that a dichotomous system of flood
- 15 protection for urban and rural lands has developed through many
- 16 years of practice.

1 (d) The Legislature further recognizes that levees built to reclaim
2 and protect agricultural land may be inadequate to protect urban
3 development unless those levees are significantly improved.

4 (e) Local agencies are primarily responsible for making land
5 use decisions in the state, and the Legislature intends that they
6 retain that lead role.

7 (f) Local agencies rely upon federal flood plain information
8 when approving developments, but the information available is
9 often out-of-date and the flood risk may be greater than that
10 indicated using available federal information.

11 (g) Flood plain management tools such as flood plain mapping,
12 the National Flood Insurance Program, and the designated
13 floodway program, represent important supplemental activities to
14 educate the public about, and protect the public from, flood
15 hazards.

16 (h) It is necessary for the state to immediately undertake the
17 task of mapping flood plains and submitting up-to-date information
18 to the federal government so that the federal National Flood
19 Insurance Program maps reflect current and accurate conditions.
20 In this way, the public can be provided with reliable information
21 regarding flooding potential, and local agencies can make informed
22 land use and flood management decisions so that the risk to life
23 and property can be effectively reduced.

24 *SEC. 2. Section 13332.11.1 is added to the Government Code,*
25 *to read:*

26 *13332.11.1. Notwithstanding Section 13332.11, the expenditure*
27 *by the Department of Water Resources of funds appropriated*
28 *pursuant to Section 5096.821 or 75032 of the Public Resources*
29 *Code is not subject to the approval of the State Public Works Board*
30 *if either of the following applies to the expenditure:*

31 *(a) The department is performing work pursuant to an*
32 *emergency.*

33 *(b) The department does all of the following:*

34 *(1) Obtains engineering review of the proposed project from*
35 *the United States Army Corps of Engineers.*

36 *(2) Obtains engineering review of the proposed project from*
37 *an independent board of consultants for any project with a*
38 *construction cost exceeding five million dollars (\$5,000,000).*

39 *(3) Provides a written report to the Reclamation Board.*

1 (4) Provides information on the project expenditure to the
2 Legislature in a semiannual report due on April 1 and October 1
3 each year.

4 (5) Provides written notification to the Legislature if funds are
5 made available by Section 75032 of the Public Resources Code to
6 pay a project cost increase for which the Legislature has not
7 otherwise been notified in writing.

8 SEC. 3. Section 5096.830 is added to the Public Resources
9 Code, to read:

10 5096.830. The development or adoption of program guidelines
11 and selection criteria for the purposes of this chapter is not subject
12 to the review or approval of the Office of Administrative Law or
13 to any other requirement of Chapter 3.5 (commencing with Section
14 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

15 ~~SEC. 2.~~

16 SEC. 4. Section 8306 is added to the Water Code, to read:

17 8306. (a) Notwithstanding any other provision of law, the
18 department may provide meals and other necessary support to any
19 person, including, but not limited to, an employee of the
20 department, who is engaged in emergency flood fight activities on
21 behalf of, or in cooperation with, the department.

22 (b) For the purposes of this section, “emergency flood fight
23 activities” mean actions taken under emergency conditions to
24 maintain flood control features, the failure of which threaten to
25 destroy life, property, or resources.

26 ~~SEC. 3.~~

27 SEC. 5. Section 8612 is added to the Water Code, to read:

28 8612. (a) On or before December 31, 2008, the department
29 shall prepare, and the board shall adopt, a schedule for mapping
30 areas at risk of flooding in the Sacramento River and San Joaquin
31 River drainage.

32 (b) The department shall update the schedule annually and shall
33 present the updated schedule to the board for adoption on or before
34 December 31 of each year. The update shall include the status of
35 mapping in progress and an estimated time of completion. The
36 schedule shall be based on the present and expected future risk of
37 flooding and associated consequences.

38 ~~SEC. 4.~~

39 SEC. 6. Section 8613 is added to the Water Code, to read:

1 8613. (a) The board or the department may establish a program
 2 of mitigation banking for the activities of the board or the
 3 department under this part and for the benefit of local districts in
 4 the discharge of their flood control responsibilities under this part
 5 and the State Water Resources Law of 1945 (Chapter 1
 6 (commencing with Section 12570) and Chapter 2 (commencing
 7 with Section 12639) of Part 6 of Division 6).

8 (b) For the purposes of carrying out subdivision (a), the board
 9 or the department, in consultation with all appropriate state, local,
 10 and federal agencies with jurisdiction over environmental
 11 protection that are authorized to regulate and impose requirements
 12 upon the flood control work performed under this part or the State
 13 Water Resources Law of 1945 (Chapter 1 (commencing with
 14 Section 12570) and Chapter 2 (commencing with Section 12639)
 15 of Part 6 of Division 6), may establish a system of mitigation
 16 banking by which mitigation credits may be acquired in advance
 17 for flood control work to be performed by the board, the
 18 department, or a local agency authorized to operate and maintain
 19 facilities of the State Plan of Flood Control.

20 ~~SEC. 5:~~

21 *SEC. 7.* Chapter 9 (commencing with Section 9110) is added
 22 to Part 4 of Division 5 of the Water Code, to read:

23

24 CHAPTER 9. REPORTS

25

26 Article 1. Definitions

27

28 9110. Unless the context requires otherwise, the definitions
 29 set forth in this article govern the construction of this chapter.

30 (a) “Fiscal year” has the same meaning as that set forth in
 31 Section 13290 of the Government Code.

32 (b) “Levee flood protection zone” means the area, as determined
 33 by the board or the department, that is protected by a project levee.

34 (c) “Local agency” means a local agency responsible for the
 35 maintenance of a project levee.

36 (d) “Maintenance” has the same meaning as that set forth in
 37 subdivision (f) of Section 12878.

38 (e) “Project levee” means any levee that is part of the facilities
 39 of the State Plan of Flood Control.

1 (f) “State Plan of Flood Control” means the state and federal
2 flood control works, lands, programs, plans, policies, conditions,
3 and mode of maintenance and operations of the Sacramento River
4 Flood Control Project described in Section 8350, and of flood
5 control projects in the Sacramento River and San Joaquin River
6 watersheds authorized pursuant to Article 2 (commencing with
7 Section 12648) of Chapter 2 of Part 6 of Division 6 for which the
8 board or the department has provided the assurances of nonfederal
9 cooperation to the United States, and those facilities identified in
10 Section 8361.

11

12 Article 2. State Reports

13

14 9120. (a) The department shall prepare and the board shall
15 adopt a flood control system status report for the State Plan of
16 Flood Control. This status report shall be updated periodically, as
17 determined by the board. For the purposes of preparing the report,
18 the department shall inspect the project levees and review available
19 information to ascertain whether there are evident deficiencies.

20 (b) The status report shall include identification and description
21 of each facility, an estimate of the risk of levee failure, a discussion
22 of the inspection and review undertaken pursuant to subdivision
23 (a), and appropriate recommendations regarding the levees and
24 future work activities.

25 (c) On or before December 31, 2008, the board shall advise the
26 Legislature, in writing, as to the board’s schedule of
27 implementation of this section.

28 9121. (a) On or before September 1, 2010, and on or before
29 September 1 of each year thereafter, the department shall provide
30 written notice to each landowner whose property is determined to
31 be entirely or partially within a levee flood protection zone.

32 (b) The notice shall include statements regarding all of the
33 following:

34 (1) The property is located behind a levee.

35 (2) Levees reduce, but do not eliminate, the risk of flooding and
36 are subject to catastrophic failure.

37 (3) If available, the level of flood risk as described in the flood
38 control system status report described in Section 9120 and a levee
39 flood protection zone map prepared in accordance with Section
40 9130.

1 (4) The state recommends that property owners in a levee flood
 2 protection zone obtain flood insurance, such as insurance provided
 3 by the Federal Emergency Management Agency through the
 4 National Flood Insurance Program.

5 (5) Information about purchasing federal flood insurance.

6 (6) The Internet address of the Web site that contains the
 7 information required by the flood management report described
 8 in Section 9141.

9 (7) Any other information determined by the department to be
 10 relevant.

11 (c) A county, with assistance from the department, shall annually
 12 provide to the department, by electronic means, lists of names and
 13 addresses of property owners in a levee flood protection zone
 14 located in that county.

15 (d) Notwithstanding any other provision of the law, the
 16 department may enter into contracts with private companies to
 17 provide the notices required by this section.

18 9122. The board shall determine the areas benefited by facilities
 19 of the State Plan of Flood Control based on information developed
 20 by the department.

21

22 Article 3. Levee Flood Protection Zone Maps

23

24 9130. (a) The department shall prepare and maintain maps for
 25 levee flood protection zones. The department shall prepare the
 26 maps by December 31, 2008, and shall include in the maps a
 27 designation of those lands where flood levels would be more than
 28 three feet deep if a project levee were to fail, using the best
 29 available information. The maps shall include other flood depth
 30 contours if that information is available.

31 (b) The department shall distribute the levee flood protection
 32 zone maps to appropriate governmental agencies, as determined
 33 by the department.

34 (c) The department shall make the maps readily available to the
 35 public. The department may charge a fee for the cost of reproducing
 36 the maps. *To the extent feasible, maps shall be made available on*
 37 *the Internet Web site of the department.*

38 (d) The department may periodically revise the maps to include
 39 updated information when that information becomes available.

Article 4. Local Reports

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9140. (a) On or before September 30 of each year, a local agency responsible for the operation and maintenance of a project levee shall prepare and submit to the department, in a format specified by the department, a report of information for inclusion in periodic flood management reports prepared by the department relating to the project levee. The information submitted to the department shall include all of the following:

(1) Information known to the local agency that is relevant to the condition or performance of the project levee.

(2) Information identifying known conditions that might impair or compromise the level of flood protection provided by the project levee.

(3) A summary of the maintenance performed by the local agency during the previous fiscal year.

(4) A statement of work and estimated cost for operation and maintenance of the project levee for the current fiscal year, as approved by the local agency.

(5) Any other readily available information contained in the records of the local agency relevant to the condition or performance of the project levee, as determined by the board or the department.

(b) A local agency described in subdivision (a) that operates and maintains a nonproject levee that also benefits land within the boundaries of the area benefited by the project levee shall include information pursuant to subdivision (a) with regard to the nonproject levee.

(c) A local agency that incurs costs for the maintenance or improvement of a project or nonproject levee under the delta levee maintenance subventions program established pursuant to Part 9 (commencing with Section 12980) of Division 6 may submit information submitted to satisfy the requirements of that program to meet the requirements of paragraph (3) of subdivision (a), but may do so only for that reach of the levee included in that program.

(d) (1) A local agency responsible for the operation and maintenance of a levee not otherwise subject to this section may voluntarily prepare and submit to the department or the board a flood management report for posting on the Internet Web site of the department or the board.

1 (2) A flood management report submitted pursuant to paragraph
 2 (1) shall be made available on the Internet Web site of the board
 3 if the local agency is partially or wholly within the geographical
 4 boundaries of the board’s jurisdiction. Otherwise, the report shall
 5 be made available on the Internet Web site of the department.

6 9141. (a) The department shall prepare and transmit to the
 7 board a report on the project levees operated and maintained by
 8 each local agency, using information provided by the local agency
 9 pursuant to Section 9140 and information from relevant portions
 10 of any of the following documents, as determined by the
 11 department:

12 (1) Annual inspection reports on local agency maintenance
 13 prepared by the department or the board.

14 (2) The State Plan of Flood Control.

15 (3) The flood control system status report described in Section
 16 9120.

17 (4) The schedule for mapping described in Section 8612.

18 (5) Any correspondence, document, or information deemed
 19 relevant by the department.

20 (b) The department shall make the flood management report
 21 for each local agency available on the Internet Web site of the
 22 board and shall provide the report to all of the following entities:

23 (1) The local agency.

24 (2) Any city or county within the local agency’s jurisdiction.

25 (3) Any public library located within the local agency’s
 26 jurisdiction.

27 (c) The report shall be completed on or before December 31,
 28 2008, and shall be updated annually.

29 9142. A local agency responsible for the operation and
 30 maintenance of a project levee may propose to the board an upgrade
 31 of the project levee if the local agency determines that the upgrade
 32 is appropriate. The local agency may implement that upgrade if
 33 approved by the board.

34 ~~SEC. 6.~~

35 *SEC. 8.* Part 8 (commencing with Section 9650) is added to
 36 Division 5 of the Water Code, to read:

PART 8. PROJECT LEVEE UPGRADES

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3 9650. (a) (1) Commencing July 1, 2008, the allocation or
4 expenditure of funds by the state for the upgrade of a project levee,
5 if that upgrade is authorized ~~by a statute that becomes operative~~
6 on or after July 1, 2008, that protects an area in which more than
7 1,000 people reside shall be subject to a requirement that the local
8 agency responsible for the operation and maintenance of the project
9 levee and any city or county protected by the project levee,
10 including a charter city or charter county, enter into an agreement
11 to adopt a safety plan within two years. If a city or county is
12 responsible for the operation and maintenance of the project levee,
13 the governing body shall approve a resolution committing to the
14 preparation of a safety plan within two years.

15 (2) The local entity responsible for the operation and
16 maintenance of the project levee shall submit a copy of the safety
17 plan to the department and the Reclamation Board.

18 (b) The safety plan, at a minimum, shall include all of the
19 following elements:

20 (1) A flood preparedness plan that includes storage of materials
21 that can be used to reinforce or protect a levee when a risk of failure
22 exists.

23 (2) A levee patrol plan for high water situations.

24 (3) A flood-fight plan for the period before state or federal
25 agencies assume control over the ~~flood-fight~~ *flood fight*.

26 (4) An evacuation plan that includes a system for adequately
27 warning the general public in the event of a levee failure, and a
28 plan for the evacuation of every affected school, residential care
29 facility for the elderly, and long-term health care facility.

30 (5) A floodwater removal plan.

31 (6) A requirement, to the extent reasonable, that either of the
32 following applies to a new building in which the inhabitants are
33 expected to be essential service providers:

34 (A) The building is located outside an area that may be flooded.

35 (B) The building is designed to be operable shortly after the
36 floodwater is removed.

37 (c) The safety plan shall be integrated into any other local
38 agency emergency plan and shall be coordinated with the state
39 emergency plan.

1 (d) This section does not require the adoption of an element of
2 the safety plan that was adopted previously and remains in effect.
3 9651. Unless the context requires otherwise, the definitions
4 set forth in this section govern the construction of this part.

5 (a) “Emergency plan” and “state emergency plan” have the
6 meanings set forth in subdivisions (a) and (b), respectively, of
7 Section 8560 of the Government Code.

8 (b) “Essential service providers” includes, but is not limited to,
9 hospitals, fire stations, police stations, and jails.

10 (c) “Long-term health care facility” has the same meaning as
11 defined in Section 1418 of the Health and Safety Code.

12 (d) “Project levee” means any levee that is part of the facilities
13 of the State Plan of Flood Control.

14 (e) “Residential care facility for the elderly” has the same
15 meaning as defined in Section 1569.2 of the Health and Safety
16 Code.

17 (f) “School” means a public or private preschool, elementary
18 school, or secondary school or institution.

19 (g) “State Plan of Flood Control” means the state and federal
20 flood control works, lands, programs, plans, policies, conditions,
21 and mode of maintenance and operations of the Sacramento River
22 Flood Control Project described in Section 8350, and of flood
23 control projects in the Sacramento River and San Joaquin River
24 watersheds authorized pursuant to Article 2 (commencing with
25 Section 12648) of Chapter 2 of Part 6 of Division 6 for which the
26 board or the department has provided the assurances of nonfederal
27 cooperation to the United States, and those facilities identified in
28 Section 8361.

29 (h) (1) “Upgrade of a project levee” means installing a levee
30 underseepage control system, increasing the height or bulk of a
31 levee, installing a slurry wall or sheet pile into the levee, rebuilding
32 a levee because of internal geotechnical flaws, or adding a stability
33 berm.

34 (2) Notwithstanding paragraph (1), an upgrade of a project levee
35 does not include any action undertaken on an emergency basis.

36 ~~SEC. 7.~~

37 *SEC. 9.* Section 12585.12 is added to the Water Code, to read:
38 12585.12. The department and the board may participate with
39 the federal government or local agencies in the design of
40 environmental enhancements associated with a federal flood control

1 project, and may participate in the construction of environmental
2 enhancements associated with a federal flood control project for
3 which the state has authorized state participation.

4 *SEC. 10. Section 12878 of the Water Code is amended to read:*
5 12878. Unless the context otherwise requires, the following
6 definitions apply throughout this chapter:

7 (a) “Department” means Department of Water Resources.

8 (b) “Director” means the Director of Water Resources.

9 (c) “Board” means the State Reclamation Board.

10 (d) Wherever the words “board or department” or “board or
11 director” are used together in this chapter they shall mean board
12 as to any project in the Sacramento or San Joaquin Valleys or on
13 or near the Sacramento River or the San Joaquin River or any of
14 their tributaries, and department or director as to any project in
15 any other part of the state outside of the jurisdiction of the board.

16 (e) “Project” means any project that has been authorized
17 pursuant to Chapter 2 (commencing with Section 12639) or Chapter
18 4 (commencing with Section 12850) and concerning which
19 assurances have been given to the Secretary of the Army or the
20 Secretary of Agriculture that the state or a political subdivision
21 thereof will operate and maintain the project works in accordance
22 with regulations prescribed by the federal government or any
23 project upon which assurances have been given to the Secretary
24 of the Army and upon which the Corps of Engineers, United States
25 Army, has performed work pursuant to Section 208 of Public Law
26 780, 83rd Congress, 2nd Session, approved September 3, 1954.

27 (f) “Maintenance” means work described as maintenance by
28 the federal regulations issued by the Secretary of the Army ~~or~~, the
29 Secretary of Agriculture, *the department, or the board* for any
30 project.

31 (g) “Maintenance area” means described or delineated lands
32 that are found by the board or department to be benefited by the
33 maintenance and operation of a particular unit of a project.

34 (h) “Unit” means any portion of the works of a project
35 designated as a unit by the board or department, other than the
36 works prescribed in Section 8361, or works operated and
37 maintained by the United States.

38 (i) “Land” includes improvements.

39 (j) “Local agency” means and includes all districts or other
40 public agencies responsible for the operation of works of any

1 project under Section 8370, Chapter 2 (commencing with Section
 2 12639) or Chapter 4 (commencing with Section 12850) or any
 3 other law of this state.

4 (k) “Cost of operation and maintenance” means, for the purposes
 5 of maintenance areas established after July 31, 2004, as the result
 6 of relinquishment by a local agency pursuant to Section 12878.1
 7 only, the cost of all maintenance, as defined in subdivision (f), and
 8 shall also include, but is not limited to, all of the following costs:

9 (1) All costs incurred by the department or the board in the
 10 formation of the maintenance area under this chapter.

11 (2) Any costs, if deemed appropriate by the department, to
 12 secure insurance covering liability to others for damages arising
 13 from the maintenance activities of the department or from flooding
 14 in the maintenance area.

15 (3) Any costs of defending any action brought against the state,
 16 the department, or the board, or any employees of these entities,
 17 for damages arising from the maintenance activities of the
 18 department or from flooding in the maintenance area.

19 (4) Any costs incurred in the payment of any judgment or
 20 settlement of an action against the state, the department, or the
 21 board, or any employees of these entities, for damages arising from
 22 the formation of the maintenance area or from any maintenance
 23 activities of the department or flooding in the maintenance area.

24 ~~SEC. 8.~~

25 *SEC. 11.* Section 12878.1 of the Water Code is amended to
 26 read:

27 ~~12878.1. (a) If the board or the department finds that a unit of~~
 28 ~~a project, or any portion of a unit of a project, is not being operated~~
 29 ~~or maintained in accordance with the standards established by~~
 30 ~~federal regulations or whenever the governing body of a local~~
 31 ~~agency obligated to operate and maintain that unit by resolution~~
 32 ~~duly adopted and filed with the department declares that it no~~
 33 ~~longer desires to operate and maintain the unit, the department~~
 34 ~~shall prepare a statement to that effect specifying in detail the~~
 35 ~~particular items of work necessary to be done in order to comply~~
 36 ~~with the standards of the federal government together with an~~
 37 ~~estimate of the cost thereof for the current fiscal year and for the~~
 38 ~~ensuing fiscal year.~~

39 *12878.1. (a) If the department determines that a unit of a*
 40 *project is not being operated or maintained in accordance with*

1 *the standards established by federal regulations, if the department*
2 *determines that the modification of a unit of a project that has*
3 *been permitted by the board and that provides flood protection is*
4 *not being operated or maintained in accordance with the*
5 *requirements established by the board or the department, or if the*
6 *governing body of a local agency obligated to operate and maintain*
7 *that unit by resolution duly adopted and filed with the department*
8 *declares that it no longer desires to operate and maintain the*
9 *project unit, the department shall prepare a statement to that effect*
10 *specifying in detail the particular items of work necessary to be*
11 *done in order to comply with the standards of the federal*
12 *government and the requirements of the board or the department*
13 *together with an estimate of the cost thereof for the current fiscal*
14 *year and for the immediately ensuing fiscal year.*

15 (b) Subject to subdivision (c), but notwithstanding any other
16 provision of law, the board or the department is not required to
17 proceed in accordance with subdivision (a) or with the formation
18 of a maintenance area under this chapter if neither the board nor
19 the department has given the nonfederal assurances to the United
20 States required for the project. If neither the board nor the
21 department has given the nonfederal assurances to the United States
22 required for the project, the board or department may elect to
23 proceed with the formation if it determines that the formation of
24 a maintenance area is in the best interest of the state.

25 (c) If a local agency requests the department to form a
26 maintenance area by resolution duly adopted and filed with the
27 department, the department shall estimate the cost of preparing
28 the statement of necessary work and the cost thereof, and all other
29 applicable costs incurred by the department before the formation
30 of the maintenance area. The department shall submit that estimate
31 to the local agency. The department is not required to perform any
32 additional work to form that maintenance area until the local
33 agency pays the department the amount estimated pursuant to this
34 subdivision.

35 ~~SEC. 9.~~

36 *SEC. 12.* Section 12878.21 of the Water Code is amended to
37 read:

38 12878.21. Upon the formation of a maintenance area, the
39 department shall thereafter operate and maintain the unit until such
40 time as the maintenance area may be dissolved pursuant to this

1 chapter. If the board or the department forms a maintenance area
2 for a portion of a unit of a project, any remaining portion of the
3 unit of a project not included in the maintenance area shall remain
4 the responsibility of the local agency obligated to operate and
5 maintain that unit.

6 ~~SEC. 10.~~

7 *SEC. 13.* Section 12878.23 of the Water Code is amended to
8 read:

9 12878.23. (a) The board or the department may modify the
10 boundaries of any established maintenance area or zones within
11 the maintenance area, the description of works to be maintained
12 within the maintenance area, and the determination of relative
13 benefits within any zone, upon its own initiative or upon petition
14 by the governing body of the local agency formerly responsible
15 for the operation and maintenance of the unit or by the board of
16 supervisors of the county in which all or a portion of the unit is
17 located.

18 (b) The board or the department may consolidate maintenance
19 areas that share a common boundary.

20 ~~SEC. 11.~~

21 *SEC. 14.* No reimbursement is required by this act pursuant to
22 Section 6 of Article XIII B of the California Constitution because
23 a local agency or school district has the authority to levy service
24 charges, fees, or assessments sufficient to pay for the program or
25 level of service mandated by this act, within the meaning of Section
26 17556 of the Government Code.

27 However, if the Commission on State Mandates determines that
28 this act contains other costs mandated by the state, reimbursement
29 to local agencies and school districts for those costs shall be made
30 pursuant to Part 7 (commencing with Section 17500) of Division
31 4 of Title 2 of the Government Code.